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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**INJURED SEAMAN,**

Plaintiff,

v.

CV. 98-1234-HO

**VESSEL OWNER,**

Defendant.

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**PRETRIAL ORDER**

The following pretrial order is lodged pursuant to LR 16.6.

**1. NATURE OF THE ACTION**

This is an action for injuries alleged to have been suffered by the plaintiff. Plaintiff was employed by the defendant as a seaman and as a member of the crew of the F/V STAR.

The parties have consented to trial and entry of judgment by a magistrate judge.

## **2. SUBJECT MATTER JURISDICTION**

Jurisdiction is granted the court by the Jones Act, 26 U.S.C. § 688. Jurisdiction of the unseaworthiness claims is further granted by general maritime law.

## **3. AGREED FACTS**

[List all agreed facts, marking those with an asterisk that are agreed to but disputed as to relevance.]

## **4. CLAIMS AND DEFENSES**

### **CLAIM ONE – Negligence**

#### **(a) Plaintiff contends:**

- (1)** On February 14, 1983, the defendant was negligent in one or more of the following particulars:
  - (A)** In navigating the vessel so that the cable caught on a shackle at the starboard trawl door;
  - (B)** In having a shackle turned with the pin on its upward side, causing the transfer line to be caught, breaking loose a ring on the gallows post when the lines fouled;
  - (C)** In failing to warn plaintiff that the cable was fouled on the shackle;
  - (D)** In permitting and requiring crew members, including plaintiff, to work in the area of the trawl cable under the circumstances then and there existing.
- (2)** As a result of the negligence of the defendant in one or more of the above particulars, plaintiff was struck in the back of the legs by the winch cable and thrown into the air, striking the crab block and falling, causing him to suffer nervous shock, physical and mental pain and suffering, a wrenching, tearing and twisting of the muscles, ligaments, nerves, soft tissue and bone of the head, arms, back and coccyx, a sprain or strain of the low back and coccyx, a probable fracture of the coccyx, injury to the left part of the head, headaches, swelling and injury to the right forearm, olecranon bursitis

of the left elbow, a strain or sprain of the cervical area, the back injury causing or superimposed upon spondylolisthesis at the L5-S1 level, all of which injuries are or may be permanent and may cause future wage loss or lost earning capacity and medical expense, and have caused plaintiff general damage.

- (3) As a result of his injuries, plaintiff has lost wages in the approximate amount of \$[specify amount] and has incurred medical expenses in the approximate amount of \$[specify amount].

## **Defense One**

**(b) Defendant contends:**

- (1) Defendant denies plaintiff's contentions.
- (2) The plaintiff himself performed the weld on the vessel's shackle which failed on or about February 14, 1983.
- (3) Plaintiff was himself at fault in a manner which caused his injuries:
- (A) In negligently performing the weld on the vessel's shackle which failed on or about February 14, 1983;
  - (B) In failing to warn the vessel's owner and operator that the weld was of insufficient strength to withstand the pressure of the cables;
  - (C) In failing to adequately inspect the shackle and its weld;
  - (D) In failing to keep an adequate or any lookout for his own safety.
- (4) Defendant paid all medical bills associated with this injury, and likewise paid to plaintiff his lost wages until he returned to work on the vessel later in 1983.

## **Claim Two – Unseaworthiness**

**(c) Plaintiff contends:**

- (1)** On February 14, 1983, the vessel was unseaworthy in one or more of the following particulars:

  - (A)** In navigating the vessel so that the cable caught on a shackle at the starboard trawl door;
  - (B)** In having a shackle turned with the pin on its upward side, causing the transfer line to be caught, breaking loose a ring on the gallows post when the lines fouled;
  - (C)** In failing to warn plaintiff that the cable was fouled on the shackle;
  - (D)** In permitting and requiring the crew members, including plaintiff, to work in the area of the trawl cable under the circumstances then and there existing.
- (2)** As a result of the unseaworthiness of the vessel in one or more of the particulars above set forth, plaintiff was injured and sustained damages as alleged in Claim One. These damages are in the alternative, and not in addition, to those alleged in Claim One.

## **Claim Two – Defense**

**(d) Defendant contends:**

- (1)** Plaintiff was himself at fault in a manner which caused his injuries:

  - (A)** In negligently performing the weld on the vessel's shackle which failed on or about February 14, 1983;
  - (B)** In failing to warn the vessel's owner and operator that the weld was of insufficient strength to withstand the pressure of the cables;
  - (C)** In failing to adequately inspect the shackle and its weld;
  - (D)** In failing to keep an adequate or any lookout for his own safety.

(2) Defendant paid all medical bills associated with this injury, and likewise paid to plaintiff his lost wages until he returned to work on the vessel later in 1983.

**5. OTHER LEGAL ISSUES**

[Set forth legal issues, if any.]

**6. AMENDMENTS TO PLEADINGS**

[Include a statement indicating proposed amendments to the pleadings, if any]

**DATED this 27<sup>th</sup> Day of February, 2001.**

**PLAINTIFF'S LAW FIRM**

**DEFENDANT'S LAW FIRM**

\_\_\_\_\_  
**Attorney for Plaintiff**  
Oregon State Bar Number

\_\_\_\_\_  
**Attorney for Defendant**  
Oregon State Bar Number

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**For Court Use Only**

The foregoing Pretrial Order is:

\_\_\_\_\_ Approved as lodged.

\_\_\_\_\_ Approved as amended by interlineation and the pleadings are amended accordingly.

**SO Ordered, this \_\_\_\_\_ Day of \_\_\_\_\_, 20 \_\_\_\_\_.**

\_\_\_\_\_  
**Malcolm F. Marsh**  
**Senior United States District Judge**